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ENROLLMENT ACT.

SPEECH

OF

HON. THOMAS WILLIAMS,

OF

PENNSYLVANIA,

ON

THE ENROLLMENT ACT.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 3, 1864.

The House being in Committee of the Whole on the state of the Union, and having under consideration the Enrollment Act, Mr. WILLIAMS said :

Mr. CHAIRMAN : If this had been a new question, I should have felt greatly embarrassed as to the policy or propriety of commuting military service for money. This is a war measure, and not a revenue measure. The Government wants men, and not money. The latter has been furnished by the people with unstinted and ungrudging liberality ; nay, with a prodigality which has surprised ourselves, and at which the world stands amazed. I do not know how to value the stout heart or the strong arm of the American freeman in the current money of the merchant. I do not like the traffic in men and muscle and sinew, whether it be white or black. Looking to the experience of other republics, I should greatly deprecate the conversion of the soldier of ours into a mercenary. Between men of American growth and training, and the richest of the metals, I know no common standard of comparison. With me they are quantities incommensurable. When the Republic demands the services of her children, I know no answer they can make, except that of Isaac, that they are ready for the sacrifice. It is the answer which their uncalculating instincts prompted when the echoes of the guns in Charleston harbor thrilled along their nerves, and half a million of them sprang to their arms at the first summons of the President to avenge the insult to our flag ; when the very yearnings of maternity were hushed, and the American, like the Spartan mother,

arrayed her youngest born as though it had been for the bridal, put the musket in his hands, and sent him out with the invocation of God's blessing upon his errand, and the injunction to do his duty and come back upon his shield, if such were the fortunes of war, but not without it. It is the answer which they would still make, if their ardor were not chilled by the fatal and inglorious inaction, the wearisome delays, the inadequate results, and the want of earnestness, which have distinguished so many of our commanders; or, what is worse still, if their love of country was not overlaid and smothered by the devilish suggestion of wicked counsellors, who have squatted at their ears, and distilled into them the subtle venom of party.

They have ceased, however, to make that answer. Enthusiasm was too weak to survive rebuffs and disappointments, while treason at home was but too ready to make them the occasion for denunciations against the Government and questions as to the rightfulness and the successful results of the war. It has become, of course, a necessity to remind the backward of their duty, and to insist that it shall be performed. These arguments have prevailed, however, with many of the people who had been accustomed to take counsel from the malcontents. They have held back, accordingly, until it has become indispensable to awaken them to a sense of the obligations which they owe to their country. Their advisers do not, however, deny the duty; so far as lip-service is concerned, there is an abundance of it. But they insist that the performance shall be a voluntary one, or, in other words, that it shall rest in their own discretion. Like Falstaff, they would do nothing on compulsion. To compel a Democrat to fight would be anti-republican, or if there is to be compulsion, it must be, upon the authority of a great casuist of the Romish Church, who has not read Bellarmine in vain, and knows how to turn a corner as adroitly as the original and inimitable Jack himself, a voluntary one, a sort of compulsion in the Pickwickian sense. To compel him in any other way would be a violation of his prerogative as a freeman. A perfect liberty is the right of doing what we please, but never anything on compulsion.

And now a word or two in sober earnest on the objection taken seriously here, and urged throughout the country, in relation to the legitimacy of the draft. I need not apologize for speaking on that point. It is always important to satisfy the people not only that a thing is law, but that it is right. It is always well to add the sanctions of conscience and the sense of duty to the mandates of the lawgiver. Without this, laws are practically impotent. The "*sic volo, sic jubeo stet pro ratione voluntas*" of an imperial rescript is not the argument for an American citizen. He wants more than this, and he wants it here because immense pains have been taken to cloud his perceptions and pervert his moral sense by representing the compulsory performance of the highest of his duties as a violation of his liberties. The oracles of the Opposition have proclaimed—their highest legal authorities in Pennsylvania, in the exercise of a jurisdiction heretofore unknown, have decided—that the act of the last session was unconstitutional. Men equally trusted by them here have insisted that its principle was anti-republican. It is important, therefore, to inquire whether these things are so—whether there is anything here to authorize these imputations or to excuse even a reluctant submission to a measure which is essential to the safety of the nation and has been made necessary by the counsels of the very men who now complain of it.

I do not propose to enter into objections of detail arising out of the peculiar features of the law or to argue the question upon merely technical or professional grounds. These are for the courts. This is a higher forum, and the objection made to the prin-

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ciple—radical as it is—an appeal from the lawyer to the publicist, from the courts to the people. It is the statesman who must decide it, and not the judge.

Is it true, then, that a compulsory levy of troops—a conscription, if you please—in the extremity of a State is anti-republican in principle, or in other words, at war with the spirit of our institutions and the genius and character of this Government? It has been so announced on this floor, on authority supposed to be conclusive, and has gone to the country without contradiction. It was a challenge of the law from a higher point than the Constitution. It was not the assertion in terms that the law was at variance with the Constitution, but in effect that the Constitution itself was not republican, and did not conform to the fundamental idea on which it rested. It was the proclamation of a higher law which the authority "to raise and support armies" had impinged upon.

Well, I am no higher-law man, except so far as the consideration of the public safety or the nation's life may make me so. I am not ashamed or afraid to recognize thus publicly the maxim of the *salus populi suprema lex*. It was a provision of consummate wisdom in the constitution of republican Rome, and one which in the judgment of one of the acutest and profoundest statesman of any age was the source of all its grandeur as well as the guarantee of its stability, which created a dictatorship for times of great public peril, for the reason that such a power must be invoked in the extremities to which every State is subject, and that where it is wanting it becomes necessary to violate the constitution—which is always of bad example—in order to the salvation of the State.

For the sake of greater clearness, I quote the passage itself, translated by me from the French version in default of an English one, of the "Treatise on the Republic," by Machiavelli:

"This part of the constitution of Rome deserves to be remarked, and ranked in the number of those which contributed the most to the greatness of its empire. Without an institution of this nature, a State cannot escape but with great difficulty from extraordinary convulsions."

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"It follows from this that all republics must have in their constitutions a like establishment. When it is wanting it becomes necessary, by pursuing the ordinary track, to see the constitution perish, or rather to depart from it for the purpose of saving it. But in a State well constituted no event must happen for which there shall be occasion to resort to extraordinary ways; for if extraordinary means do good for the moment, their example constitutes a real evil. The habit of violating the constitution to do good afterwards authorizes its violation to color evil. A Republic, therefore, is never perfect if its laws have not provided for everything, held the remedy always in readiness, and furnished the means of employing it. And I conclude by saying that republics which in imminent dangers have no recourse either to a dictator or to like magistrates, must inevitably perish therein."

The war power of our Constitution is the equivalent of the Roman dictatorship. It is, however, here as well as there, the extreme medicine of the Constitution, and not its daily bread. The mission of a republic is peace; war is a state of violence. To conduct an army upon the principles of republican equality would be fatal to all subordination and discipline. For such an exigency as this, the normal condition of a republic will not serve. Its very organization would forbid it. War is anti-republican in its effects, and can only be successfully waged on anti-republican principles. While it prevails the law itself must almost necessarily be silent. Its code of laws is necessarily anti-republican. With such a Government, therefore, it is an unnatural condition, and the thirst for territorial aggrandizement through the agency of the sword does violence to its nature and its life. But while wars of conquest are anti-republican, a war of self-

defense to preserve the nation's life is a legitimate because it is a necessary one. The doctrine of non-resistance would be fatal to any Government. When there is no mode left of supporting the Constitution, except by suspending the enjoyment of an individual right, that right must yield to the occasion. It is not the Constitution that authorizes the suspension of the *habeas corpus*. Recognizing, as its framers did, the necessity of putting the highest privilege of the citizen in abeyance, they do not *grant* but only *qualify* or abridge its exercises, by providing that it shall not be suspended *except* in the cases indicated. Every attribute of sovereignty which pertains to any Government that is supreme may be exercised when necessary, unless it is expressly forbidden. Thus the right of *eminent domain*, as it is called by the publicists, or that which authorizes the seizure or destruction of private property for public uses, and the kindred power of taxation which seizes it without other equivalent than the protection which the Government affords, are not the subjects of special *grant*, but only of special *limitation*. Establish a government that is independent and sovereign, and they belong to it of course, because they are essential attributes, inseparable from its very being. If a Government can, however, take private property, which is the mere product of labor, without compensation, for a public use, it is but a step further, and an easy one, to take the producer himself, as it does when it compels him to work on the highway on the ground of public necessity.

It is not disputed, as I understand, by anybody here, that the Government is entitled to the military services of all its citizens when they are needed for its defense. The objection is only that a compulsory levy is *anti-republican*. If this be true, then the idea of such a thing as a republican Government is the wildest of chimeras. Admitting the duty, the right to enforce it is a corollary, a necessary consequence, in this case as in all others. The notion of any Government at all presupposes supremacy, subordination, and constraint. No Government ever did or ever can rest upon the mere voluntary principle. All the duties of the citizen, except those merely moral ones that are said to be of imperfect obligation—all that are political at least—rest upon the idea of coercion. That is the principle of every law. That is the import of the whole judicial machinery with which we are surrounded. The *posse comitatus* itself is nothing more nor less than a compulsory levy, an army improvised to execute the laws. When the time arrives—which will not be until the millennium foreshadowed by the prophets, and several years after the modern Democracy shall have died out like the extinct monsters of the earlier geological epochs—when men shall perform their duties voluntarily, there will be no further occasion for either Government or laws. The notion that the mob of New York, and the unnatural sympathizers with the rebellion everywhere, shall not be *compelled* to defend the Government that protects them in all their rights and endows them with the unwonted privilege of governing other people, is but the extension of the argument of the late Attorney General of the United States, and now reporter of its Supreme Court, that there could be no coercion of States, and that this great Government was without even the power of self-defense, was helpless against the parricide, and must uncover its bosom or wrap its robes around it and submit to death without a struggle whenever the murderous blow was aimed by the hands of its own children. That was according to programme. Both have the same purpose and meaning. That would have crowned the work of the traitors with immediate success. This is a slower poison, which would leave the defense of the nation to the loyal Unionists in the field, and transfer the direction of the Government to the hands of the auxiliaries of the rebellion, who choose

“to kiss my lady peace at home;” who know that they can serve the cause they love, with more effect and greater safety here by affecting loyalty, misrepresenting the designs of the Government, discouraging volunteering, and denouncing compulsory levies of men, than by taking their places openly in the armies of the confederacy. I do not know a man of them who is not now an “unconditional Unionist” *provided* he can have “the Union as it was,” which he knows to be impossible, whether we succeed or fail, or *treat*, as he desires us to do, and hopes to bring about by cherishing the disease, preserving the cause of the disunion, and declining to employ the most necessary and effective weapon which Providence has placed in our hands for compelling the eventual restoration of the Union itself. Thank God! the instincts of the people, the loyal army at home, have revolted at the special plea of the attorney, and even converted him at the late elections into the noisiest of patriots and the professed advocate of the vigorous prosecution of the war; that is to say on peace principles, and provided you will refuse to *allow* the willing negro or *compel* the reluctant and recalcitrant Democrat to fight. The fear is, in view of the well-known Army sentiment, that it would change the very nature of the latter by showing him the realities of war and making him a radical, or, in other words, an earnest man.

We have the authority of one of the apostles of the new Democracy now holding a seat on this floor, if the newspapers have not misrepresented him, for the opinion publicly expressed in the great peace convention at New York, that a war Democrat is an impossible thing; and that any man who would draw a sword here in such a quarrel—I mean on this side of it—is no better than a Black Republican. And so it is that, while all the Democracy of Butler and Burnside and Hooker and other fighting generals of that stamp, who have proved that they were in earnest, has failed to shelter them from the denunciations of the rebel papers in Richmond and New York, the non-combatant qualities of the grave-digger of the Chickahominy and the loiterer at Bull Run have made him the idol of the Democracy in both those capitals. If the gentleman from Kentucky, who was taxed a few days ago by his colleagues, with infidelity to his pledges to vote for a war Democrat, had adverted to the sentiment to which I have just referred, he might have answered that a war Democrat was a myth—a person even more apocryphal than Prester John or the man with the iron mask.

If it be true, however, that a compulsory levy of men for the protection of the Government or the enforcement of its laws is anti-republican, then I say again that republican government is just as impossible a thing as a war Democrat. The nation which cannot command the military services of its people has no guarantee of life, and must inevitably perish in its first formidable convulsion. To presume that they will all rush to its standard at the first summons, and that they will adhere to it alike through good and ill fortune, alike through sunshine and through storm, is to suppose in the face of our present experience that it contains no bold traitors who will lift their hands against it in battle, no cowardly miscreants who, with professions of loyalty on their lips, will adopt the safe policy of skulking from its defense, or aiding and encouraging those who are endeavoring to overthrow it. The time was when this service was a privilege of rank or fortune; when the soldier served without wages, although he derives his name from the idea of pay, and when the craven who refused to respond to the summons of his country was visited with the dire anathema which is so well paraphrased by the genius of the immortal Scott, and finds its climacteric in the imprecation “Woe to the

traitor, woe!" A greater than he has remarked that "the age of chivalry is gone, and the age of sophisters and economists has succeeded." It was not so at the commencement of this rebellion.

I happened to be at the seat of government of Pennsylvania when the news of the bombardment of Sumter came over the electric wires, and shook its capital as with an earthquake throe, and then sped on its fiery errand along the Susquehanna and the Delaware and the limpid Alleghany, until it reached the distant shore of the great lake which bathes her northwestern confines. The fiery cross that passed from hand to hand and gathered the clansmen of the hill around the banner of their chief never so traveled, never lighted such a conflagration as was kindled by that message. Before the setting of another sun a hundred thousand Pennsylvania men were begging for the privilege of laying down their lives in the defense of the insulted flag of their fathers. The political managers of the Democratic party who had bargained against coercion and pledged themselves that Pennsylvania would take sides with the rebellious States were appalled by the demonstration, and slunk away from the public gaze which would have blasted them. It was only when reverses overtook our arms—reverses which were the consequence of the unsuccessful effort to propitiate themselves by taking counsel with and employing men of the same type of thought—that they ventured to reappear, and managed to seduce the loyal men of the Democratic party into the belief that a Republican Administration was unfit to conduct the war, which they reinforced by the argument that it was obliged to borrow its generals almost exclusively from the Democratic party. If a draft was made necessary after such a demonstration it was through their agency. If it has proved ineffective or unpopular it is because they have endeavored to make it so.

The country knows how the question was dealt with by the Democratic authorities of New York. It knows, too, the process by which the Democratic judges of the supreme court of Pennsylvania undertook, with indecent precipitancy, and in the exercise of a jurisdiction entirely new, to restrain the execution of the law which authorized it. And we are reminded here from day to day that there are men among us who apparently do not intend that the country shall find soldiers, either white or black, if they can prevent it; who insist that we shall not enlist the negro because it is a privilege which belongs only to the white man; who say to the white man that he ought not to volunteer because it is an abolition war; and that the conscription is unlawful and unnecessary because we ought to depend on volunteers; and who, after doing everything in their power to render the law ineffective, come here and, with a coolness that would be absolutely refreshing if the times were not so much out of joint, demand its repeal on the ground that they have succeeded! I have heard it stated that the district of the gentleman from New York who is most importunate on this point has yielded—under his patriotic auspices, no doubt—about three hundred and fifty soldiers, leaving his voters, of course, most comfortably intact, and in a condition to govern the nation at least, if they will not fight for it. If he favors the war, however, as he says he does, why does he not endeavor to amend the law? If the commutation clause is the difficulty with his constituents, and he thinks that a poor man can pay \$1,000 for a substitute more easily than he can pay \$300, why does he not move to strike it out?

I fear it cannot be made to suit gentlemen of that cast of mind and heart unless it can be so framed as to defeat the object entirely. Their constitutional scruples will not allow them to do anything for the salvation of this nation. They have found no diffi-

culty heretofore in discovering in that instrument every power that was required to further the interests of the divine institution. They had no difficulty in regard to the Louisiana or Florida purchases; none as to the annexation of Texas; none as to the assumption of its debts; none as to the purchase or seizure, at the expense of another war like the Mexican if necessary, of the gem of the Antilles. When the attempt is made, however, to extract anything valuable from that instrument for the interests of humanity or the preservation of the nation's life, it is no better than a *caput mortuum*—without vitality, full of obstructions, impotent for good, but alive all over, in all its members, and actively omnipotent, too, for mischief. These constitutional expounders who strain at a gnat make no account of taking in a camel at a breakfast. I should despair of making anything out of them by a constitutional argument.

W. H. Moore, Printer

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